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DISMAL SWAMP R. CO. *v.* JOHN L. ROPER LUMBER CO.

March 13, 1913

[77 S. E. 598.]

1. Eminent Domain (§ 10*)—Right to Exercise Power.—A corporation organized as the successor of the Norfolk & Camden Railroad Company, which was chartered by Act Feb. 2, 1892 (Laws 1891-92, c. 136), with right to condemn necessary land, that company's property having been purchased at mortgage foreclosure, is entitled to condemn land for its uses, though it be shown that the successor's stock is owned by the same persons who own the stock of a lumber company whose freight constitutes the greater part of the railroad's traffic, though the road be a short one, does a small business, owns little rolling stock, maintains no proper passenger coaches or station facilities, and files no tariffs.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 35-48; Dec. Dig. § 10.* 5 Va.-W. Va. Enc. Dig. 71; 14 Va.-W. Va. Enc. Dig. 384; 15 Va.-W. Va. Enc. Dig. 341.]

2. Railroads (§ 32*)—Charters—Forfeiture—Collateral Attack.—A cause for forfeiture of a railroad company's charter cannot be taken advantage of collaterally in a proceeding by it to condemn land.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 63-69; Dec. Dig. § 32.* 3 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 228.]

Error to Circuit Court, Norfolk County.

Condemnation proceedings by the Dismal Swamp Railroad Company against John L. Roper Lumber Company. Judgment for defendant, and petitioner brings error. Reversed and remanded.

Braxton & Eggleston, of Richmond, and *Starke, Venable & Starke*, of Norfolk, for plaintiff in error.

J. G. Martin, of Norfolk, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.